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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,156	07/21/2003	Joseph Pohutsky	20-520	2708

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EXAMINER

SHEDRICK, CHARLES TERRELL

ART UNIT	PAPER NUMBER
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2687

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/623,156	Applicant(s) POHUTSKY ET AL.	
	Examiner Charles Shedrick	Art Unit 2687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-5-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

***Double Patenting***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims **1-4,6-10, 20-22, 26-28** objected to under 37 CFR 1.75 as being a substantial duplicate of claims **11-14,15-19,23-25,29-31**. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

3. Applicant is advised that should claims **1-4,6-10, 20-22, 26-28** be found allowable, claims **11-14,15-19,23-25,29-31** will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

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***Drawings***

The drawings were received on 5/5/04. These drawings are accepted.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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**Claims 1,2,10,11,12,19,20,21,23,24, 26,27,29, and 30** are rejected under 35 U.S.C.

103(a) as being unpatentable over **Lohtia (US 6,560,456)** in view of **Whittington U.S.**

**Patent No.: 6,131,028**

**Regarding claims, 1,11,20,23,26,and 29**, Lohtia et al. teaches a method and system of providing location-based reference information in a wireless network comprising: receiving an information telephone call from a subscriber, **(Col. 5 line 66-Col.6 line 5)**, using a location based service to obtain a location of said subscriber **(Col. 2 line 40, Col. 4 Line 32, and Col. 5 line 30)**; retrieving a short message relating to said location based on requested information, and transmitting said retrieved short message to said subscriber **(Col. 3 Lines 35-42, Col. 4 Lines 48-50, Col. 5 lines 56-59, and Col. 5 Line 66-Col.6 line 5)**.

However, Lohtia et al. does not specify that the location-based service to obtain a location of the subscriber is a wireless service and a telephone number initiating said telephone call including at least one auxiliary digit (feature code) beyond those associated with the information telephone call; retrieving a message relating to said location based on requested information associated with said at least one auxiliary digit. For example, Lohtia teaches location information based on current location of subscriber as cited above, but does not spell out if the system finds the user or if the user enters his location in his profile.

In the same field of endeavor, Whittington, clearly show and disclose a location-based service to obtain a location of the subscriber is a wireless service **(abstract, columns 2-5)** and a telephone number initiating said telephone call including at least one auxiliary digit (feature code) beyond those associated with the information telephone call

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(**column 3 lines 22-35 and column 4 lines 53-65**); retrieving a message relating to said location based on requested information associated with said at least one auxiliary digit (i.e., a feature code can be used to obtain directions to the nearest gas station )(**column 3 lines 22-35 and column 4 lines 53-65**).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include a feature code appended to a telephone number as taught by Whittington for the purpose of automating a location finding service.

**Regarding claims 2,12,21,24,27, and 30 and as applied to claims 1,11,20,23,26, and 29**, Lohtia et al. clearly teach the claimed invention except the method and system wherein at least two auxiliary digits are included with said information telephone call.

In the same field of endeavor, Whittington clearly show and disclose the method and system wherein at least two auxiliary digits are included with said information telephone call (**column 3 lines 22-35 and column 4 lines 53-65**).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include at least two auxiliary digits with said information telephone call as taught by Whittington for the purpose of automating a location finding service.

**Regarding claims 10 and 19 and as applied to claims 1 and 11**, Lohtia et al. clearly disclose the claimed invention except a method of providing location-based reference information in a wireless network according to claim 11, wherein: said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber.

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In the same field of endeavor, Whittington clearly show and disclose except a method of providing location-based reference information in a wireless network according to claim 11, wherein: said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber (**column 4 line 60-65**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber as taught by Whittington for the purpose of establishing a point of reference in terms of location services.

**Claims 3,4,7, 8,9,13,14,17,18,22,25,28,31** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lohtia et al. (US 6,560,456)** in view of **Whittington U.S. Patent No.: 6,131,028** and further in view of **Bar et al. (US 6,456,852)**.

Regarding **Claims 3,13,22,25,28, and 31** and as applied to claims **1,11,20,23,26, and 29**, Lohtia et al. as modified by Whittington clearly teach claimed invention. Lohtia further teaches that an information number can be any number which would obviously include the dialed digits "4-1 -1" (**Col. 5 lines 42-44**).

Although, the dialed digits "4-1-1" is a well known telephone number for information calls, Lohtia et al. as modified by Whittington does not specifically state that an information number uses the dialed digits "4-1-1".

In the same field of endeavor, Bar et al. teaches the information number being the dialed digits "4-1-1" (**Col. 3 Line 15**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. as modified by Whittington to include the dialed digits "4-1-1" as the information number utilized for location finding services as taught by Bar et al. By using the dialed digits "4-1-1" it is obvious that dialing for information could be further automated.

**Regarding claims 4, 8, 9,14,17, and 18 and as applied to claims 1, and 11,** Lohtia et al. as modified by Whittington clearly disclose the claimed invention except teaching that the subscriber can be located using wireless or cellular signaling, time difference of arrival, and time of arrival.

However, in the same field of endeavor, Bar et al. teaches that the subscriber can be located using wireless or cellular signaling (**Col. 5 lines 37–49**), time difference of arrival (**Col. 3 line 47**), and time of arrival (**Col. 3 line 46**).

Therefore it would have been obvious to a person at the time the invention was made to modify Lohtia et al. as modified by Whittington to include or cellular signaling, time difference of arrival, and time of arrival as taught by Bar et al. for the purpose of location services.

**Regarding claim 7 and as applied to claim 1 above ,** Lohtia et al. as modified by Whittington clearly disclose the claimed invention except teaching that the location is determined by using a network generated Location based on a centroid of a cell site sector's radio frequency polygon.

However, in the same field of endeavor, Bar et al. teaches that location determined by using a network generated Location based on a centroid of a cell site sector's radio frequency polygon (**Col. 3 Lines 25-35**).



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Therefore it would have been obvious to a person at the time the invention was made to modify Lohtia et al. as modified by Whittington to include a location determined by using a network generated Location based on a centroid of a cell site sector's radio frequency polygon as taught by Bar et al. for the purpose of location services.

**Claims 6 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lohtia et al. (US 6,560,456)** in view of **Whittington U.S. Patent No.: 6,131,028** and further in view of **Hines (US2004/0203922)**.

**Regarding claims 6 and 16 and as applied to claims 1 and 11 above**, the Lohtia and Whittington combination teaches all the particulars of the claims except locating the subscriber using angle of arrival.

However, Hines teaches locating a wireless device using angle of arrival (**Page 2 (0033)**).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Hines into that of the combination for the obvious reason of having another way to locate the subscriber.

#### ***Response to Arguments***

Applicant's arguments with respect to claims **1-31** have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Shedrick whose telephone number is (571)-272-8621. The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid Lester can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles Shedrick  
AU 2687  
November 7, 2005



NICK CORSARO  
PRIMARY EXAMINER